

10 SENTENCING AS TO COUNTS 1, 2, AND 3 OF THE INFORMATION
11 BEFORE SENIOR DISTRICT JUDGE GLEN H. DAVIDSON
12 WEDNESDAY, JANUARY 4, 2017; 10:00 A.M.
13 OXFORD, MISSISSIPPI

12 FOR THE GOVERNMENT:

16 FOR THE DEFENDANT.

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1 (CALL TO ORDER OF THE COURT)

2 THE COURT: Let's see. The Court takes up, at this
3 time, sentencing in Cause No. 1:16CR50, United States of
4 America v. Lindsey D. Downs. The record should reflect that
5 the United States is represented in this proceeding by
6 Assistant United States Attorney Chad Doleac. Ms. Downs is in
7 court with her attorney, Mr. Anthony L. Farese.

8 Now, Counsel, the submissions to the Court indicate that
9 there are no objections to the Presentence Report? Is that
10 correct?

11 MR. FARESE: That is correct, Your Honor.

12 THE COURT: Very well.

13 MR. DOLEAC: Yes, sir, Your Honor.

14 THE COURT: If you'll come around and stand before
15 the Court, please.

16 (PARTIES COMPLYING)

17 THE COURT: There being no objections to the
18 Presentence Investigation Report, the Court adopts those
19 findings and conclusions set forth in the Presentence
20 Investigation Report without change; factual findings made by
21 the United States Probation Service are adopted by the Court.

22 Now, in this case, the gun count carries a mandatory
23 minimum sentence. One or more counts of conviction carry a
24 mandatory minimum term of imprisonment, but the sentence
25 imposed can be below the statutory minimum based upon the

1 Government's motion for downward departure; and that motion is
2 made by the United States where they tell the Court that this
3 defendant has substantially assisted the Government in further
4 prosecutions in this case.

5 The Court determines that the guideline that's applicable
6 to this case is a total offense level of 23, criminal history
7 category I. Counts 1 and 2, the charge of possession with
8 intent to distribute and possession with intent to distribute
9 methamphetamine, a schedule II controlled substance, the
10 guidelines applicable to those two counts carry a recommended
11 period of incarceration from 46 to 57 months on each count of
12 conviction.

13 Count 3, the firearm's count, has a statutory minimum of
14 5 years consecutive to all other counts. But I state, for the
15 record, that the United States has filed a motion pursuant to
16 Paragraph 5K1 of the Sentencing Commission Guidelines
17 authorizing this Court to depart downward.

18 Now, let me ask, is this Ms. Downs in the courtroom,
19 Ms. Brenda Downs?

20 MR. FARESE: It is, Your Honor.

21 THE COURT: Yes, ma'am. If you would move down where
22 I could see you. I just want to thank you and commend you for
23 what you've done for this young lady in the face of many
24 troubling conditions and hardships I know you've faced.

25 And I also want to commend you for taking care of this

1 daughter who I am now -- I believe is close to, what, 15 years
2 old?

3 MS. BRENDA DOWNS: Seven. Her daughter is seven.

4 THE COURT: Okay. And that daughter is with you in
5 your home?

6 MS. BRENDA DOWNS: Yes.

7 THE COURT: Well, if there's one stabilizing factor
8 in all of this material I've read relative to Ms. Downs, you
9 are certainly one of those. And I commend you for it. You've
10 had a tough time. Okay.

11 Now, let's see. You know, in spite of all you've been
12 into, Ms. Downs, you've had some positive people, Ms. Inman; I
13 read her letter. She's a contemporary of yours, about the same
14 age, a recruiter for Ole Miss. And she's now employed in the
15 admissions office at Ole Miss, I believe. And she says she's
16 been a friend of yours ever since you started the first grade.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Also, I have a letter, a real good
19 letter, from Ms. Luker and Ms. Settlemires. And she's a
20 professor at Blue Mountain College?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And she's certainly been a positive
23 influence with you. It's just -- it baffles me how someone
24 your age, 23 years old -- you've had experiences that -- it
25 baffles me that all of this has taken place in your young life.

1 Mr. Farese, at this time, I'll hear any statement you or
2 your client wish to make prior to the imposition of sentence.

3 MR. FARESE: Yes, sir.

4 THE DEFENDANT: I feel like, for the first 21 years
5 of my life, I did exactly what I was supposed to. I was
6 working hard, and I was going where I thought I needed to go.
7 And, once I started drugs, everything just went downhill.
8 Every decision I made was the wrong one.

9 And it wasn't until I was detoxing and finally sober that
10 I could look back and see that I had just made terrible
11 decisions. And I had just realized that the path that I was
12 walking down is not one that I want to get to the end of. I
13 don't want to be addicted to drugs. I don't want to make the
14 same mistakes over and over.

15 And Ms. Settemires, she was preaching at the jail; and
16 she really helped me find God in a whole new light and made
17 this experience manageable, told me to take it one day at a
18 time. So 86,000 seconds at a time, I took it.

19 THE COURT: Well, in addition to reading the letters
20 I've just mentioned, I also read your lengthy submissions to
21 the Court. How long ago was it when she pled guilty, about
22 two -- it was some months ago.

23 MR. FARESE: Yes, sir.

24 THE COURT: But, anyway, the comment I wanted to
25 make, you've gained weight; and you look a lot healthier than

1 you did when you appeared before me pleading guilty. Now, what
2 that is, is you're off that meth.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Yeah. You look so much better than you
5 did just whatever that was, 5 or 6 months ago, maybe not that
6 long. How long ago has it been?

7 MR. TOLLISON: It was August 25th of last year, Your
8 Honor.

9 THE COURT: Okay. Well, I just make that comment;
10 you look so much healthier. And you've been in the Tippah
11 County Jail all this time?

12 MR. FARESE: The vast majority, Your Honor; and then
13 she was moved to Oxford and then Monroe County.

14 THE COURT: Okay. Monroe County?

15 MR. FARESE: Yes, sir. In Aberdeen.

16 THE COURT: Well -- okay. Anything else you want to
17 say to me, Ms. Downs?

18 THE DEFENDANT: I'm sorry that I'm here. I'm sorry
19 that I put myself and my family and my daughter through this.
20 I'm sorry that I didn't even realize that my addiction was
21 touching everyone around me, not just myself.

22 THE COURT: Okay.

23 Mr. Farese, do you --

24 MR. FARESE: Yes, sir, Your Honor. Of course, the
25 Government's filed a 5K1.1 motion for a downward departure.

1 Ms. Downs has cooperated with the Government to the best of her
2 ability. We think she sincerely and honestly provided help.
3 She's testified to a federal grand jury, and I think that she's
4 acknowledged her wrongdoing in this matter.

5 I've asked the Court to consider some 3553(a) factors in
6 this particular case and -- I think that are pertinent to
7 mention here. She's only 23 years of age. And, unfortunately,
8 when she was six months old, her mother was unable to take care
9 of her. Her mother was a stripper and a drug addict.

10 The father was drug addicted as well. Lindsey has eight
11 step-siblings. She really did not know them. She went to live
12 with Brenda and Gary Downs in Tiplersville, Mississippi in
13 Tippah County; and they really raised her. Unfortunately,
14 when -- while Lindsey was incarcerated, Mr. Gary Downs passed
15 away. She was unable to attend his funeral.

16 But they worked extremely hard. They were laborers.
17 Money was not plentiful. But Brenda has been, really, a
18 surrogate mother; and she's here today. She's 62 years of age,
19 and she's disabled. But, when Lindsey was 15 and in high
20 school, she became pregnant with the only child she has, Mylie
21 Grace Downs; and Ms. Brenda has been raising that child.

22 Lindsey did graduate from Walnut High School in 2011. She
23 made good grades and was a straight A student in her final
24 year, Your Honor. She received an associate's degree in arts
25 with a major in English education in 2013. She had attended

1 Ole Miss, and she lacked a semester in completing her
2 bachelor's degree in English education.

3 She has suffered mental and emotional challenges, Your
4 Honor, through her life. She has a history of depression,
5 which included post-partum depression. She's previously
6 attempted suicide on three occasions in her life.

7 She's been a repeated victim of domestic violence and was
8 raped by an acquaintance at the age of 22. I sincerely suggest
9 to the Court and ask that the Court recommend the 500-hour
10 intensive drug treatment program.

11 Because of the gun count, she will not be eligible to
12 receive any reduction in sentence; but we certainly need that
13 drug education, drug counseling; so that, hopefully, when she
14 returns back to society, she will be able to face the demon and
15 conquer the demon of addiction.

16 In spite of these difficulties, Lindsey has been a good
17 mother. She's tried to participate, with the help of
18 Ms. Brenda, in being a part of Mylie Grace's life. But, during
19 this course of drug addiction, she has fallen to depths that
20 only can be analogized to, I guess, the prodigal son.

21 She worked as an escort. She was introduced to drugs by a
22 boyfriend, and that's what began this long and destructive
23 road. She did not dry out until she was actually incarcerated.
24 She began cooperating with the Government after some
25 incarcerations.

1 And, quite candidly, I, as her lawyer, told the agents not
2 to let her bond out after the Lee County matter because I was
3 afraid that she could not stay straight. She was cooperating
4 and did get out, and then was subsequently arrested in Tippah
5 County on the last -- last scope -- or the last charge.

6 But I do think it's important that she's the union of a
7 couple that were drug addicted. I thank Ms. Brenda Downs and
8 the good Lord for the influence she's had in Lindsey's life
9 and, really, one of the few stabilizing factors.

10 Ms. Settlemires is a very nice lady. During the period of
11 time that Lindsey was drying out in Tippah County, that's where
12 she really met Lindsey and has made a very positive impact on
13 Lindsey's life during that part of the detox that was -- that
14 occurred. She cycled through that, which is outlined in her
15 lengthy letter to the Court.

16 And it's interesting how I've seen, as her lawyer, that
17 she blamed other people. She blamed the people that were
18 trying to help her. She blamed Brenda. She blamed me. She
19 blamed other folks. And then, fortunately, she's come out of
20 the fog of addiction.

21 But she recognizes that saying I'm sorry doesn't take it
22 back to go on the monopoly board. She's got a debt to pay to
23 society. She's trying to pay that. She's cooperated with the
24 Government, has agreed to continue to cooperate, Your Honor.

25 It is truly a tragic, tragic thing; and, if you look at

1 the scope of this, the destructiveness that occurred in her
2 young life occurred at a rapid, rapid pace. From the beginning
3 of addiction to her dealing and then all of a sudden escalated
4 and mushroomed into --

5 THE COURT: How old was she when she was introduced
6 to methamphetamine by this boyfriend?

7 THE DEFENDANT: Twenty-one.

8 THE COURT: Twenty-one?

9 MR. FARESE: And it's really an 18-month period of
10 time that she's gone from using drugs to standing in front of
11 you with a 924(c) charge. The result of carrying the gun was a
12 result of the acquaintance rape at 22, to be quite candid.

13 There's no justification for using and dealing drugs or
14 having a firearm while you're doing that; but, so the Court
15 knows, that was her explanation to me when I first met her with
16 the gun scenario out of the Lee County arrest.

17 As the Court knows, she's got an indictment in the Circuit
18 Court of Lafayette County for burglary, which really was a
19 boyfriend. It was in a condo house owned by a doctor
20 boyfriend, but she's got a co-defendant that was a boyfriend
21 that she maintains did that.

22 She's got an indictment in Lee County and an indictment in
23 Alcorn County that we've got to deal with. But this scope of
24 destruction was like a wild fire that occurred in an 18-month
25 period. But, on the positive side, this may very well have

1 saved her life because she was truly on a roller coaster of
2 serious --

3 THE COURT: Well, that's an observation I make. Had
4 you not been arrested in Lee County as -- after that high speed
5 chase and wreck and so forth, and had you not come in contact
6 with Mr. Tony Farese, I doubt that you'd be alive today.

7 THE DEFENDANT: I agree, sir.

8 THE COURT: If that course of conduct had continued,
9 you probably wouldn't be alive right now. Fortunately, you've
10 had Mr. Farese's assistance; and you were not indicted in this
11 Court. She pled to an information.

12 MR. DOLEAC: That's correct, Your Honor.

13 THE COURT: And I stand here -- Ms. Downs, Ms. Brenda
14 Downs, it just appears to me that maybe it -- this is what
15 saved your life. Because you couldn't be running up and down
16 the highway on meth, running off the road and so forth. I
17 mean, it's just -- if there is a real bad instance that maybe
18 the -- in the long run, this would be a blessing for you.

19 Okay. I didn't mean to interrupt you, Mr. Farese.

20 MR. FARESE: Your Honor, I'm through. We ask the
21 Court to consider the matters that we've listed in our 3553(a)
22 factors that I've reviewed with the Court and, again, the
23 Government's 5K1.1 motion. Thank you, Your Honor.

24 THE COURT: Mr. Doleac?

25 MR. DOLEAC: Your Honor, excuse me. The Court has

1 noted that the Government has filed a motion for downward
2 departure. We would respectfully ask the Court grant that.
3 And Mr. Farese touched on this; Ms. Downs' cooperation --
4 continued cooperation may be requested by the Government in
5 relation to the matters that she has previously cooperated with
6 us about and some ongoing matters.

7 So we would just, I guess, state for her -- for her
8 information today that we ask her not to forget that; her
9 continued cooperation is required as a result of her plea
10 agreement and supplement. But, other than that, Your Honor,
11 the Government has nothing to add.

12 THE COURT: Very well. Thank you.

13 Well, Ms. Downs, as you heard me recite these guideline
14 provisions, you face a very lengthy sentence in this case.
15 Counts 1 and 2 carry a recommended sentence of 46 to 57 months
16 to be followed by a 5-year mandatory minimum. So you could
17 very easily be facing a 10-year sentence or more.

18 But, now, the fact that the Government has filed a 5K1
19 motion for downward departure, that gives this Court some
20 leeway in sentencing you in this case. Otherwise, I would have
21 to impose at least that mandatory minimum 5-year sentence.

22 It's just an unusual case to have someone in this Court
23 who has had all of these life experiences at your still young
24 age. And, you know, your grades -- your last couple of years
25 in high school were 4.0, straight A grades.

1 And then you won a national competition for art, a
2 national, United States, the whole country, from the Beta Club
3 art contest. I've never had anybody with that sort of record
4 before me either.

5 And then you -- you lack only -- from the records I had,
6 it appears that you lack only one semester graduating from
7 college.

8 THE DEFENDANT: (Nodding head).

9 THE COURT: You know, life's just a series of
10 decisions, choices. And for, looks like, nearly 20 years, you
11 were making good choices. And then the bottom just fell out.
12 And that's all -- all because of meth.

13 But I say, you look like a different person than you did
14 when you appeared before me just months ago to plead guilty. I
15 bet you've gained 10 or 15 pounds. You look a lot healthier.

16 And, you know, thank goodness you ran into this --
17 Mr. Farese and then this Ms. Settlemires, and some of these
18 other people that -- and, again, I can't say enough about
19 Ms. Brenda Downs. And that continues with your daughter.

20 THE DEFENDANT: (Nodding head).

21 THE COURT: You went to Walnut High School?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you live in Tippah County,
24 Tiplersville.

25 Ms. Brenda Downs, I read your letter. Is there anything

1 you'd like to say in addition to your letter? (Pause). You
2 think I have everything before me?

3 MS. BRENDA DOWNS: I don't know. Probably not, but
4 I'd just like to state right now my mind's not doing very well.

5 THE COURT: I couldn't hear her.

6 MS. BRENDA DOWNS: I said probably not. There's
7 probably lots that I could tell you, but I just -- my mind's
8 just kind of in a fog. I can't really -- you know.

9 THE COURT: Okay.

10 As I've stated before, the Government has filed this
11 motion for a downward departure pursuant to Paragraph 5K1 of
12 the United States Sentencing Commission Guidelines based upon
13 substantial assistance.

14 Pursuant to the Sentencing Reform Act of 1984, it is the
15 judgment of the Court that the defendant, Lindsey N. Downs, is
16 hereby committed to the custody of the United States Bureau of
17 Prisons to be imprisoned for a term of 48 months.

18 This term consists of 18 months on Counts 1 and 2 of the
19 information to which this defendant pled guilty to be served
20 concurrently, and 30 months on Count 3 of the information to be
21 served consecutively to the sentence imposed in Counts 1 and 2.
22 That's a total period of incarceration of 48 months. And,
23 Ms. Downs, that -- that sentence could -- under the guidelines,
24 could have gone up to 12 years.

25 THE DEFENDANT: (Nodding head).

1 THE COURT: But I'm sentencing you to 4 years. Upon
2 release from imprisonment, the defendant shall be placed on
3 supervised release for a term of 3 years on Counts 1, 2, and 3
4 of the information. All terms of supervised release shall be
5 served concurrently.

6 Now, the Court realizes that certain factors are within
7 the sole discretion of the United States Bureau of Prisons; but
8 the Court recommends that this defendant be afforded the
9 opportunity to enroll and be a participant in the 500-hour
10 intensive drug treatment program.

11 Further, the Court recommends to the United States Bureau
12 of Prisons that it take into account the grades and college
13 hours that this defendant possesses; and that she be considered
14 for any sort of educational programs that are available to the
15 Bureau of Prisons, including any online program where she might
16 do some work towards her college degree.

17 Further, the Court recommends that the Bureau of Prisons
18 consider her for an instructor's position in literacy programs
19 that exist in the Bureau of Prisons, that she could -- in the
20 opinion of the Court, she could help other inmates obtain a GED
21 license.

22 I'm just saying that the Bureau -- I realize this is all
23 recommendations, and I recommend that the Bureau take into
24 account her intelligence and the education that she has today.

25 Now, this will apply -- these conditions will apply only

1 after the defendant is released from incarceration. She shall
2 cooperate in the collection of DNA as directed by her probation
3 officer. She shall comply with the standard conditions that
4 have been adopted by this Court.

5 In addition, taking into consideration any prior court
6 ruling on objections, if any, to the special conditions of
7 supervision outlined in the Presentence Report, and considering
8 there is no additional opposition, the Court imposes the
9 following special conditions: Following supervised release,
10 the defendant shall participate in a program of testing and
11 treatment for substance abuse as directed by her probation
12 officer.

13 She shall participate in a program of mental health
14 treatment as directed by the probation officer until such time
15 as she is released from the program by her probation officer.

16 After release from prison, she shall submit any personal
17 property, residence, vehicle, papers, and so forth to
18 reasonable searches, including electronic communications, by
19 the United States Probation Service.

20 An officer may conduct a search pursuant to this condition
21 only when reasonable suspicion exists that the defendant has
22 violated a condition of supervision. Any search must be
23 conducted in a reasonable time and in a reasonable manner.

24 Now, this -- this -- these conditions only apply after
25 you're released from incarceration. No fine is being ordered

1 due to the defendant's inability to pay. It is ordered that
2 she shall pay to the United States District Court Clerk's
3 Office the special assessment of \$100 on each count of
4 conviction, which is required in all criminal cases, for a
5 total of \$300, which shall be paid immediately but taking into
6 account her financial situation.

7 Now, in imposing sentence in this case, the Court has
8 departed downward for the following reasons: The sentence is
9 below the guideline range, and the primary basis of that
10 downward departure is the motion filed by the United States
11 pursuant to Paragraph 5K1.1 of the guidelines manual.

12 Restitution is not applicable in this case; so, therefore,
13 there's no order of restitution. In imposing this sentence,
14 the Court has considered the advisory guideline range, the
15 statutory penalties, and the sentencing factors enumerated in
16 18, United States Code, Section 3553(a), as well as the
17 Government's motion.

18 Now, the factors that the Court has considered pursuant to
19 18 U.S.C. Section 3553(a), the Court has considered the nature
20 and circumstances of the offenses, the history and
21 characteristics of the defendant, the sentence imposed reflects
22 the seriousness of the offense, promotes respect for the law,
23 and provides just punishment for the offense.

24 Taking all factors into consideration, the Court is of the
25 opinion that this sentence affords adequate deterrence to

1 criminal conduct and protects the public from any further
2 crimes by this defendant. I just hope and pray that you never
3 appear in court again.

4 THE DEFENDANT: (Nodding head).

5 THE COURT: Also, the sentence provides the defendant
6 with needed educational or vocational training, medical care,
7 and other correctional treatment in the most effective manner.
8 For these reasons, the Court has imposed the sentence of
9 48 months.

10 The Court considers the motion filed by the United States
11 to be the type of departure -- to be the type contemplated by
12 the United States Sentencing Commission in the provisions in
13 the manual recognizing substantial assistance to the
14 Government.

15 Now, Ms. Downs, pursuant to the plea agreement in this
16 case and the motion for downward departure, the defendant has
17 waived all rights to appeal the conviction and/or sentence
18 imposed and the manner in which the sentence was imposed on any
19 ground whatsoever, including, but not limited to, the grounds
20 set forth in 18 U.S.C. Section 3742.

21 The defendant has also waived all rights to contest or
22 collaterally attack the conviction or sentence in any
23 postconviction proceedings, including, but not limited to, any
24 motion brought pursuant to 28 U.S.C. Section 2255, except to
25 claims relating to prosecutorial misconduct and/or ineffective

1 assistance of counsel.

2 Now, that -- that concludes sentencing in this case. Do I
3 have any questions?

4 MR. DOLEAC: Not from the Government, Your Honor.

5 Thank you.

6 MR. FARESE: No, sir, not from the defendant, Your
7 Honor.

8 THE COURT: Okay. Now, the Court has one further
9 recommendation to the United States Bureau of Prisons. The
10 Court recommends that this defendant be evaluated for her
11 mental health status. And that, if it's determined
12 appropriate, that she be given such treatment as might be
13 required.

14 It appears she does have some depression and anxiety
15 problems, and the Court recommends that that be addressed by
16 the appropriate medical authorities at the U.S. Bureau of
17 Prisons. Okay. Do we have any further question?

18 MR. FARESE: No, sir, Your Honor. Thank you, sir.

19 THE COURT: Okay. Ms. Downs, I hope that this will
20 be a positive experience for you, that you'll get off of that
21 meth; and that this sentence and the recommendations this Court
22 have made provide some light at the end of the tunnel.

23 Okay. That concludes the sentencing. The defendant will
24 be remanded to the custody of the United States Marshal. Let's
25 see. Just a moment. Let me confer here with one of the

1 marshals just a minute.

2 (Off-the-record discussion)

3 THE COURT: Okay. Now, we've got another sentencing
4 set at eleven o'clock. The Court's going to be in recess until
5 eleven.

6 (THE HEARING ENDED AT 10:38 a.m.)

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CERTIFICATE OF OFFICIAL REPORTER

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4 I, Rita Davis Young, Federal Official Realtime
5 Court Reporter, in and for the United States District Court for
6 the Northern District of Mississippi, do hereby certify that
7 pursuant to Section 753, Title 28, United States Code that the
8 foregoing is a true and correct transcript of the
9 stenographically reported proceedings held in the
10 above-entitled matter; and that the transcript page format is
11 in conformance with the regulations of the Judicial Conference
12 of the United States.

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Dated this 2nd day of May, 2017.

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/s/ Rita Davis Young

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RITA DAVIS YOUNG, FCRR, RPR, CSR #1626
Federal Official Court Reporter

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